



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE
International Trade Administration
[A-201-830]

Carbon and Certain Alloy Steel Wire Rod from Mexico: Affirmative Final Determination of Circumvention of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On December 20, 2011, the Department of Commerce (the Department) published in the Federal Register its notice of affirmative preliminary determination of circumvention.¹

We gave interested parties an opportunity to comment on the Preliminary Determination, and received briefs and rebuttal briefs from interested parties. After evaluating the comments submitted by parties, we find no basis for altering the Department's preliminary findings.

Accordingly, pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(i), we continue to determine that shipments of wire rod with an actual diameter of 4.75 mm to 5.00 mm by Deacero S.A. de C.V (Deacero) constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the order on wire rod from Mexico. Further, we continue to determine that Ternium Mexico S.A. de C.V. (Ternium) is not covered by this affirmative anti-circumvention inquiry because information on the record indicates that Ternium has not shipped wire rod with diameters of 4.75 mm to 5.0 mm.

EFFECTIVE DATE: [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds, Program Manager, or Jolanta Lawska, Trade Analyst, Office 3, Antidumping and Countervailing Duty Operations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

¹ See Carbon and Certain Alloy Steel Wire Rod from Mexico: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order, 76 FR 78882 (December 20, 2011) (Preliminary Determination).

Avenue, NW, Washington, DC 20230; telephone: (202) 482-6071 or (202) 482-8362, respectively.

SUPPLEMENTARY INFORMATION

Background

On June 8, 2011, the Department initiated a circumvention inquiry into whether Deacero and Ternium shipped wire rod with an actual diameter measuring 4.75 mm to 5.00 mm in a manner that constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope.² On December 20, 2011, the Department published its notice of affirmative preliminary determination of circumvention.³ The Department determined that wire rod with an actual diameter of 4.75 mm to 5.00 mm produced in Mexico and exported to the United States by Deacero is circumventing the antidumping duty order on wire rod from Mexico. The Department also directed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of such merchandise and require case deposits on said entries.⁴

In accordance with 19 CFR 351.225(f)(3), interested parties were invited to submit comments on the Preliminary Determination. On January 12, 2012, Deacero submitted a case brief. On January 23, 2012, ArcelorMittal USA LLC, Gerdau Ameristeel U.S. Inc, Rocky Mountain Steel, and Members of the Wire Rod Producers Coalition (collectively, the Coalition) and Nucor Corporation (Nucor) submitted rebuttal briefs. The Department considered these submissions for the final determination of this circumvention inquiry. No party requested a hearing.

² See Carbon and Certain Alloy Steel Wire Rod from Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order, 76 FR 33218 (June 8, 2011) (Initiation). The Department is using slightly different wording in this Federal Register notice from the wording in the initiation notice and Preliminary Determination to clarify that Deacero's shipments of 4.75 mm wire rod are covered by this circumvention inquiry.

³ See Preliminary Determination.

⁴ See Id., 76 FR at 78884.

Scope of the Order

The merchandise subject to this order is carbon and certain alloy steel wire rod. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059. Although the HTS numbers are provided for convenience and customs purposes, the written product description, available in Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago, and Ukraine, 67 FR 65945 (October 29, 2002), remains dispositive.

Scope of the Circumvention Inquiry

The merchandise subject to this circumvention inquiry consists of wire rod with an actual diameter of 4.75 mm to 5.00 mm. This merchandise, produced by Deacero, entered the United States under Harmonized Tariff Schedule (HTS) classification 7213.91.3093.

Affirmative Final Determination of Circumvention

The Department conducted this circumvention inquiry in accordance with section 781(c) of the Act, which deals with minor alterations of merchandise. The Department explained in the Preliminary Determination the criteria typically used by the Department to make determinations in such inquiries (*i.e.*, the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing, and the cost of any modification relative to the total value of the imported products). See Preliminary Determination, 76 FR at 78884.

In the Preliminary Determination, the Department found that wire rod with an actual

diameter of 4.75 mm to 5.0 mm and subject wire rod are indistinguishable in any meaningful sense in terms of overall physical characteristics of the merchandise. Our preliminary analysis indicated that other physical characteristics, such as tensile strength, ductility, and chemical content (which determines product grade), do not vary by diameter. In addition, we preliminarily determined that the 0.25 mm difference between the wire rod products at issue and subject wire rod do not alter the expectations of the ultimate users, the use of the merchandise, and the channels of marketing in any meaningful way. We further determined that the costs incurred to produce wire rod with a 0.25 mm smaller diameter are not significant. Accordingly, pursuant to section 781(c) of the Act and 19 CFR 351.225(i) we preliminarily determined that shipments of wire rod with an actual diameter of 4.75 mm to 5.00 mm by Deacero constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the order on wire rod from Mexico.

The Department has analyzed the comments submitted by interested parties in the accompanying issues and decision memorandum. See the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, “Final Results of Minor Alteration Circumvention Inquiry on Carbon and Certain Alloy Steel Wire Rod with an Actual Diameter of 4.75 Millimeters (mm) to 5.00 mm,” a proprietary document dated concurrently with this notice of which the public version, as well as all other public documents and public versions of documents filed on the record of this proceeding, is available electronically via Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Central Records Unit, room 7046 of the main Department of Commerce building. In

addition, the public version of the memorandum can be accessed directly on the internet at <http://www.trade.gov/ia/>. The signed memorandum and the electronic versions of the memorandum are identical in content.

In these final results, the Department continues to find that wire rod with an actual diameter of 4.75 mm to 5.00 mm produced in Mexico and exported to the United States by Deacero is circumventing the antidumping duty order on wire rod from Mexico. Therefore, the Department finds that it is appropriate to consider that shipments of wire rod with an actual diameter of 4.75mm to 5.00 mm produced in Mexico and exported to the United States by Deacero constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the order on wire rod from Mexico.

This affirmative finding applies solely to Deacero because information supplied by Ternium indicates that it did not produce or sell merchandise subject to this circumvention inquiry.

Continuation of Suspension of Liquidation

In accordance with section 351.225(l)(3) of the Department's regulations, we are directing CBP to continue to suspend liquidation of wire rod with an actual diameter of 4.75 mm to 5.00 mm produced and/or exported by Deacero that are entered, or withdrawn from warehouse, for consumption on or after June 8, 2011, the publication date of the Initiation in the Federal Register. Pursuant to 19 CFR 351.225(l)(2), we are also instructing CBP to continue to require a cash deposit of estimated duties equal to the all others rate of 20.11 percent ad valorem for each unliquidated entry of wire rod with an actual diameter of 4.75 mm to 5.00 mm produced

and/or exported by Deacero entered, or withdrawn from warehouse, for consumption on or after June 8, 2011.⁵

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This affirmative final circumvention determination is in accordance with section 781(c) of the Act and 19 CFR 351.225.

Paul Piquado
Assistant Secretary
for Import Administration

September 24, 2012
Date

⁵ Deacero has never been individually examined by the Department during the history of the Order. For this reason Deacero's shipments of subject merchandise are subject to the all others rate.

APPENDIX

List of Comments and Issues in the Decision Memorandum

- Comment 1: Whether Initiation of a Minor Alteration Inquiry is Contingent Upon Whether the Products at Issue Existed Prior to the Investigation
- Comment 2: Whether the Products at Issue Were Commercially Available Prior to the Investigation
- Comment 3: Whether the Department Should Perform the Minor Alteration Five-Prong Analysis by Comparing 4.75 mm Wire Rod to All Wire Rod Listed in the Scope
- Comment 4: First Prong of the Minor Alteration Analysis – Physical Characteristics
- Comment 5: Second Prong of the Minor Alteration Analysis - Expectations of the Ultimate Users
- Comment 6: Third Prong of the Minor Alteration - End Use of Products at Issue
- Comment 7: Fourth Prong of the Minor Alteration Analysis - Channels of Trade and Advertising
- Comment 8: Fifth Prong of the Minor Alteration Analysis - Cost of Any Modification Relative to the Total Value of the Products at Issue

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